

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 1:14-CV-12531

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JERRY G. SMITH, III	:	
Plaintiff,	:	MDL No. 2419
v.	:	Master Docket No. 1:13-md-2419-FDS
LIBERTY INDUSTRIES, INC.,	:	Honorable Rya W. Zobel
UNIFIRST CORPORATION, A/D/B/A	:	
UNICLEAN CLEANROOM	:	
SERVICES,	:	<u>DEMAND FOR JURY TRIAL</u>
Defendants.	:	

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**SHORT FORM COMPLAINT**

Plaintiff, Jerry G. Smith, III, complaining against the Defendants, alleges as follows:

**FIRST COUNT**

1. Pursuant to MDL Order No. 7 and this Court's order of November 4, 2013, entered in In Re: New England Compounding Pharmacy, Inc. Products liability Litigation, Master Docket No. 1:13-md-2419-FDS, the undersigned counsel hereby submit this Short Form Complaint and Jury Demand against the Defendants, and adopt and incorporate by reference the allegations in the Plaintiff's Master Complaint, with attachments, and any and all amendments thereto.

2. Plaintiff is a resident of the State of Indiana.

3. Plaintiff brings this action:

On behalf of herself/himself.

- As the representative of \_\_\_\_\_, who is a living person.
- As the Administrator, Administrator ad Prosequendum, or other representative of the Estate of \_\_\_\_\_ (hereinafter “Decedent”), who died on \_\_\_\_\_.

4. Plaintiff asserts that the Plaintiff, Jerry G. Smith, III, was administered New England Compounding Pharmacy, Inc. (“NECC”) drug methylprednisolone acetate (hereinafter referred to as “NECC drug”), causing injuries and damages.

5. The aforesaid administration of the NECC drug occurred on: 7/11/2012, by Jonathon Schrock, M.D. Orthopedic & Sports Medicine (“OSMC”), 2310 California Road, Elkhart, IN 46514.

6. Plaintiff adopts and incorporates by reference the following Causes of Action asserted against the Defendants in the Master Complaint:

- COUNT I: NEGLIGENCE AND GROSS NEGLIGENCE (Against Liberty)
- COUNT II: NEGLIGENCE AND GROSS NEGLIGENCE (Against UniFirst)
- COUNT III: NEGLIGENCE AND GROSS NEGLIGENCE (Against Clinic Related Defendants)
- COUNT IV: VIOLATION OF CONSUMER PROTECTION STATUTES (Against Clinic Related Defendants)
- COUNT V: VIOLATION OF M.G.L. C. 93A (Against Liberty)
- COUNT VI: VIOLATION OF M.G.L. C. 93A (Against UniFirst)
- COUNT VII: BATTERY (Against Clinic Related Defendants)
- COUNT VIII: FAILURE TO WARN (Against Clinic Related Defendants)

- COUNT IX: TENNESEE PRODUCT LIABILITY CLAIMS (Against Tennessee Clinic Related Defendants)
- COUNT X: AGENCY (Against Clinic Related Defendants)
- COUNT XI: CIVIL CONSPIRACY (Against Clinic Related Defendants)
- COUNT XII: WRONGFUL DEATH PUNITIVE DAMAGES (Against Each Defendant)
- COUNT XIII: LOSS OF CONSORTIUM (Against All Defendants)
- COUNT XIV: PUNITIVE DAMAGES (Against All Defendants)

7. Plaintiff, Jerry G. Smith, III, claims to have suffered the following injuries as a result of the administration of NECC's drug: Lumbar puncture with subsequent treatment and symptoms, fungal meningitis. Plaintiff incurred hospital and medical expenses and may incur such expenses and losses in the future.

WHEREFORE, Plaintiff demands Judgment against the Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such further relief as the Court deems equitable and just.

Plaintiff reserves the right to amend this Complaint to add allegations and claims against individuals or entities currently omitted (in light of the Court's order permitting a Master Complaint naming defendants affiliated with NECC and currently participating in mediation by December 20) and to add or amend allegations against Defendants named herein based, in part, on further discovery.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

FOLEY & SMALL

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Date: 7/10/14, 2014